

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 64-003-15-1-5-01260-16
Petitioner: Judith E. Andamasaris
Respondent: Porter County Assessor
Parcel No.: 64-09-16-226-002.000-003
Assessment Year: 2015

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Petitioner initiated this appeal with the Porter County Property Tax Assessment Board of Appeals (“PTABOA”) on August 3, 2015. On May 25, 2016, the PTABOA issued its Notice of Final Assessment Determination. Petitioner then timely filed a Form 131 with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. On April 19, 2017, Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held the administrative hearing. Neither the Board nor the ALJ inspected the property.
4. Judith E. Andamasaris was sworn and testified. Mary Dambek, Porter County Assessor Commercial Supervisor, was sworn and testified for Respondent. Jon Snyder, Porter County Assessor, was present but was not sworn and did not testify.

Facts

5. The property under appeal is a single-family residence located at 209 W. State Road 130 in Valparaiso.
6. For 2015, the PTABOA determined the assessed value of the property to be \$96,000 for the land and \$131,900 for the improvements, for a total assessed value of \$227,900.
7. Petitioner did not request a specific value.

Record

8. The official record for this matter is made up of the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit 1:	Letter listing the basis for the appeal, and the information to be submitted at the hearing,
Petitioner Exhibit 2:	Quit-claim deed,
Petitioner Exhibit 3:	Aerial view of the subject parcel,
Petitioner Exhibit 4:	Form 11 for 2013 and letters to Jon Snyder,
Petitioner Exhibit 5:	Property record card (“PRC”), pictometry view of the subject parcel, and Form 130,
Petitioner Exhibit 6:	Letter to Kristy Marasco dated May 26, 2016,
Petitioner Exhibit 7:	Letter to Jon Snyder dated August 1, 2016,
Petitioner Exhibit 8:	Letter to Jon Snyder dated August 9, 2016,
Petitioner Exhibit 9:	Notes from August 18, 2016,
Petitioner Exhibit 10:	Valparaiso Police Report of December 20, 2016,
Petitioner Exhibit 11:	Letter to Police Chief Mike Bricker dated January 19, 2017, and photograph,
Petitioner Exhibit 12:	Letters to the <i>Chesterton Tribune</i> and <i>NW Indiana Times</i> dated January 28, 2017,
Petitioner Exhibit 13:	Letter to Robert Thompson dated January 31 2017, with photographs,
Petitioner Exhibit 14:	Proof subject property is not in a flood zone, ¹
Respondent Exhibit 1:	PRC for 2015,
Respondent Exhibit 2:	Form 115 for 2014,
Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Notice of hearing,
Board Exhibit C:	Hearing sign-in sheet,

c. These Findings and Conclusions.

Objection

9. Petitioner objected to Respondent Exhibit 1 because she contends some of the information on the PRC is inaccurate. Specifically, she claims the topography should be

¹ Petitioner also submitted a letter of apology for certain mistakes she had made in some of the exhibits. This was not labeled at the hearing but is part of the official record.

classified as hilly rather than flat, the acreage computation is incorrect, and the property is not located in a flood zone. Petitioner's objections go to the weight of the evidence and not its admissibility. Consequently, the objection is overruled and Respondent Exhibit 1 is admitted.

Burden of Proof

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to the rule.
11. First, Ind. Code § 6-1.1-15-17.2 (a) “ applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Under Ind. Code § 6-1.1-15-17.2(b), “the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indianan board of tax review or to the Indiana tax court.”
12. Second, Ind. Code 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value increased less than 5% from 2014 to 2015. Respondent, however, conceded the 2014 assessed value was the result of an appeal. Respondent, therefore, has the burden of proof.

Summary of Parties' Contentions

15. Respondent's case:
 - a. As a result of an informal hearing on the 2014 assessment, the condition of the property was changed to fair because of some structural damage. The 2014 value was

carried over to 2015 with the only change being the trending from the ratio study approved by the Department of Local Government. *Dambek testimony; Resp't Exs. 1 & 2.*

- b. Respondent contends the PRC reflects an acreage of 4.39 because that is what Petitioner previously requested. Over the years, when Petitioner asked, various changes were made to the PRC. However, Respondent contends Petitioner has never presented any evidence of value. *Dambek testimony.*

16. Petitioner's case:

- a. Petitioner contends there are inconsistencies on the PRC. She claims that the property runs downhill from State Road 130 to County Road 400 North and that the topography is shown as level when, in fact, it is hilly and rolling. Additionally, the deed shows the acreage should be 4.50 acres, not 4.39 acres as indicated on the PRC. *Andamasaris testimony; Pet'r Ex. 2.*
- b. Petitioner contends the property is not in a flood plain. In support of this contention, Petitioner presented documentation from the Federal Emergency Management Agency ("FEMA") which stated the property was not in a flood hazard area. According to Petitioner, the county has an aerial view of the property that shows water going across at least 500 feet of the edge of the property on to County Road 400 North. She claims that view is incorrect and that in 42 years, County Road 400 North has only flooded once decades ago, possibly before the road was paved. *Andamasaris testimony; Pet'r Exs. 5 & 14.*
- c. Petitioner contends that she has been discriminated against. She claims she has been refused documents that she is entitled to under the Freedom of Information Act. Further, Petitioner contends various government personnel have been contentious and unprofessional in their interactions with her. *Andamasaris testimony; Pet'r Exs. 1, 4, 6, 7, 9, 10-13.*

Analysis

- 17. Respondent failed to establish a prima facie case in support of the assessed value. The Board reached this decision for the following reasons:
 - a. Real property is assessed based on its "true tax value", which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value.

- MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
- b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2015 assessment was March 1, 2015. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
 - c. As explained above, Respondent had the burden of proving that the assessment of \$227,900 was correct. Respondent presented the 2015 PRC and the Form 115 for 2014. Ms. Dambek testified that the 2015 assessed value was the trended value from 2014.
 - d. Respondent did not offer evidence to show the market value-in-use of the subject property and failed to make a prima facie case that the 2015 assessment was correct. Accordingly, the burden did not shift to Petitioner. Because Petitioner did not request a value lower than that of 2014, Petitioner is entitled to have the 2015 assessment reduced to the 2014 value of \$222,700. This, however, does not end the Board's inquiry because Petitioner raised other issues during the hearing.
 - e. Petitioner described several contentious encounters with personnel in various county departments and agencies. Petitioner seems to believe that a property tax appeal is a platform for the airing of grievances against local officials. The issue before the Board is the true tax value of the subject property, not Petitioner's unrelated allegations of unprofessional behavior and discrimination.
 - f. Petitioner contends the property's topography is hilly and rolling rather than level. None of the evidence presented definitively supports that contention. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Consequently, the Board finds no change should be made to the topography shown on the PRC.
 - g. Petitioner contends that the subject property is not located in a flood plain and she presented probative evidence to support that contention. Her contention that the property is not located in a flood plain is further supported by a like characterization on the PRC.
 - h. Finally, Petitioner contends the parcel's acreage should be 4.5 acres. Petitioner testified that she originally requested the change to the 4.39 acres appearing on the PRC, but now wants it changed to reflect the acreage shown on the deed. Petitioner

presented the quit-claim deed showing that the acreage described in the deed totals 4.5 acres. The Board finds the acreage computation on the PRC should be changed to 4.5 acres.

CONCLUSION

18. Respondent had the burden of proving the 2015 assessment was correct and failed to make a prima facie case. The 2015 assessment must therefore be reduced to the 2014 assessed value. Petitioner presented evidence showing the acreage of the property as 4.5 acres and the PRC should be changed accordingly.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2015 assessment must be changed to \$222,700 and the acreage changed to 4.5 acres.

ISSUED: June 27, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. . The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>.